

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
ENTERED

NOV 06 2002

In Re ENRON CORPORATION
SECURITIES, DERIVATIVE &
"ERISA" LITIGATION,

§
§
§

MDL 1446

Michael N. Milby, Clerk

MARK NEWBY, ET AL.,
Plaintiffs

§
§
§

VS.

CIVIL ACTION NO. H-01-3624 ✓
AND CONSOLIDATED CASES

ENRON CORPORATION, ET AL.,
Defendants

§
§
§
§

SHERRILL R. THOMAS,
Plaintiff,

§
§
§

VS.

CIVIL ACTION NO. H-02-4136

ARTHUR ANDERSEN, L.L.P.,
Defendant.

§
§
§
§

ORDER OF CONSOLIDATION, SEVERANCE AND REMAND

Pursuant to the order of consolidation entered in lead case H-01-3624, Newby v. Enron Corp. et al. on December 12, 2001, and the transfer order of the Multidistrict Litigation Panel, the above referenced case, H-02-4136, is hereby CONSOLIDATED into H-01-3624.

Pending in H-02-4136 is Defendant Arthur Andersen L.L.P.'s motion to stay all proceedings pending final decision by the Judicial Panel on Multidistrict Litigation on whether to transfer this action (instrument #2), which is now moot. Also pending are Plaintiff Sherrill R. Thomas' motion to remand (#4) and Defendant's motion to dismiss pursuant to Fed. R. Civ. P.

TRUE COPY I CERTIFY

ATTEST:

MICHAEL N. MILBY, Clerk

By [Signature]
Deputy Clerk

1120

12(b)(6)(#11). The Court addresses the former motion first because its jurisdiction over this suit is at issue.

This case, which is not brought as a class action and asserts claims only under Alabama state law, was initially filed in state court in Alabama and removed by Arthur Andersen pursuant to the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), Pub. L. No. 105-353, 112 Stat. 3227, codified as amended in part at 15 U.S.C. §§ 77p and 78bb(f)(1998) ("no covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging . . . an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security"). As in other actions that were removed and consolidated into *Newby*, this Court concludes that it technically does not satisfy SLUSA's definition of a "covered class action."¹

¹ Title 15 U.S.C. § 78bb(f)(5)(B) defines a "covered class action" as

- (i) any single lawsuit in which--
 - (I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominated over any question affecting only individual persons or members or
 - (II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

Furthermore, the Fifth Circuit has made clear that where a Plaintiff deliberately pleads his petition to circumvent SLUSA and avoid federal jurisdiction by filing a non-class action suit under state law in state court, that does not meet SLUSA's definition "are not themselves an abuse of the courts." Newby v. Enron Corp., 2002 WL 1822352, *4 (5th Cir. Aug. 9, 2002). It further noted that

the district court cannot predicate future denials of leave [to file state court actions related to Enron] solely upon [counsel's] desire to avoid the reach of the Securities Litigation Uniform Standards Act. We do not question the filing of suits tailored to avoid federal jurisdiction. Nor do we countenance any preemptive federal dominion. The parallel exercise of state and federal judicial power is inherent in our government of dual sovereignty.

Id. at *5.

Accordingly, the Court

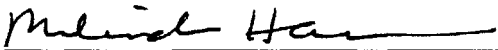
ORDERS that Plaintiff's motion to remand is GRANTED for lack of subject matter jurisdiction and that H-02-4136 is hereby SEVERED from Newby and REMANDED to the Circuit Court of Bullock County, Alabama where it was designated CV-2002-17. The state

(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which--
(I) damages are sought on behalf of more than 50 persons; and
(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

15 U.S.C. § 78bb(f)(5)(B).

court, which does have jurisdiction, will resolve Arthur Andersen's motion to dismiss.

SIGNED at Houston, Texas, this 5th day of November, 2002.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE